

² The Board notes that, following the December 13, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On June 26, 1998 appellant, then a 52-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that factors of his federal employment aggravated his lumbar disc disease for which he had undergone surgery in 1991. He noted that he first became aware of his condition on September 5, 1991 and realized its relation to his federal employment on April 3, 1998. Appellant stopped work on March 23, 1998. OWCP accepted the claim for aggravation of lumbar degenerative disc disease. Appellant medically retired from federal employment on July 31, 1998.

On June 19, 2013 Dr. Peter J. Stahl, a family medical specialist, provided a prescription for a mattress for a Flex-A-Bed for treatment of appellant's lumbago and lumbar disc disease.

In a July 5, 2013 development letter, OWCP informed appellant of the deficiencies of his request for authorization of the prescribed bed and advised him of the type of evidence needed to support his request. It requested him to provide a statement from his physician that described the basic equipment and the medical reasons for recommending the equipment, the specific goals of or benefits expected from this equipment, the expected duration of its use, a description of alternative treatment that might achieve the same results, a fully detailed description of the appliance, and cost estimates from at least two sources for a Flex-A-Bed. In this regard, OWCP noted that the requested appliance must be the least expensive size, model, and style suitable for treatment of his employment injury. It also requested information as to whether appellant presently owned a similar appliance. OWCP afforded appellant 30 days to submit the requested information.

A memorandum of telephone call (Form CA-110) documented that on July 10, 2013 appellant called to clarify that he was requesting a mattress for his current Flex-A-Bed because the mattress was "over 10 years old." OWCP's attempts to return his call were unsuccessful.

By letter dated July 12, 2013, OWCP confirmed that it had previously reimbursed appellant for a Flex-A-Bed purchased on December 14, 2004. It noted that the mattress was, therefore, 8 and a half years old, not 10 years old, as he had claimed. OWCP reiterated that it had received a prescription for a Flex-A-Bed on July 1, 2013 and that it would not approve elaborate or specialized equipment if a more basic alternative was suitable. It requested appellant to provide the information requested in its July 5, 2013 development letter within the time frame allotted.

On July 23, 2013 OWCP received an undated letter wherein appellant advised that the mattress was paid for and had helped his back condition.

OWCP subsequently received a June 19, 2013 note from Dr. Stahl. Dr. Stahl opined that appellant remained permanently disabled from work due to his work-related back conditions and noted that appellant has an electric bed, but needs a new mattress.

Appellant thereafter continued to seek treatment from Dr. Stahl, who continued to find appellant disabled from work.

On October 22, 2018 OWCP received an October 16, 2018 form report, wherein Dr. John F. Mattei, a Board-certified family practitioner, noted appellant's March 23, 1998 employment injury and his diagnoses and opined that appellant was disabled from work. In two

accompanying October 16, 2018 prescription notes, Dr. Mattei prescribed a split-king i8 360 smart bed, two mattress pads, two remote controls, two pillows, a power lift chair, and home delivery.

In an October 11, 2018 letter, received on November 20, 2018, appellant requested authorization for the following: a split-king i8 360 smart bed; two twin extra large total protection mattress pads; two five-button remote controls; two air-fit classic king pillows; and home delivery. He noted that the items with tax totaled approximately \$5,366.64. Appellant indicated that his current mattress, which was purchased in 2004 by OWCP, was now 14 years old and the requested DME items would enhance his quality of life as treatment for his work-related conditions. He also requested authorization for a powerlift chair. Appellant noted that the total cost for that item with tax was approximately \$1,079.95. Copies of vendor cost estimates for the smart bed/accessories and power lift chair were provided.

On February 11, 2019 appellant called OWCP in reference to the status of his request for a mattress and power chairlift. OWCP advised that a king sized bed would not be authorized, but a “twin xl” or semi-electric bed would be authorized. Appellant advised that he is married and cannot have a twin bed, but does need a hospital bed. He asked if he could pay the difference in price between the king-sized bed and the twin-sized bed. OWCP stated that it was under consideration and that the request for the chairlift would be referred to a district medical adviser (DMA) to determine medical necessity.

On March 12, 2019 OWCP received additional evidence from Dr. Mattei. In an October 16, 2018 report, Dr. Mattei noted that appellant was seen for his March 23, 1998 employment-related injury. He noted appellant’s physical examination findings and assessed worsening bilateral lumbar radiculopathy/stenosis/spondylosis, which he opined was secondary and causally related to the March 23, 1998 work injury. Dr. Mattei also opined that appellant was permanently totally disabled from work due to his work-related back conditions. He noted that appellant was previously prescribed a bed 14 years prior and the mattress needed to be replaced. On March 14, 2019 OWCP requested that a DMA review a statement of accepted facts (SOAF) and provide an opinion regarding the medical necessity of the requested DME as prescribed by Dr. Mattei.

In a March 25, 2019 report, Dr. Kenechukwu Ugokwe, a Board-certified neurosurgeon serving as the DMA, indicated that he had reviewed the SOAF and medical record. He answered “No” to the questions of whether the need for the proposed DME was causally related to the accepted medical conditions and medically necessary. Dr. Ugokwe explained that those items were not integral to the care of appellant with regard to his work injury, rather, they were more items of convenience and, in order for it to be medically necessary, it could not be strictly for the convenience of appellant. He further indicated that he reviewed and disagreed with Dr. Mattei’s October 16, 2018 report that the need for the requested items were causally related to the original work injury or medically necessary to appellant’s care.

OWCP, in an April 24, 2019 letter, advised appellant that its DMA reviewed the medical evidence and opined that the king size mattress and lift chair are not medically necessary because the items were not integral to appellant’s medical care in relation to his work injury.

In an April 29, 2019 letter, appellant requested that OWCP reconsider and approve his request to replace the mattress for his dual-king Flex-A-Bed that OWCP had purchased in 2004. He advised that he was covered for all medical prescriptions and DME and that the bed was an integral part of his medical care since 2004. Appellant indicated that his condition has worsened over the years, that the worn-out mattresses were aggravating and accelerating his condition, and that his legs became numb due to the lack of support from the worn-out mattress. He also asserted that his surgeon wanted to perform surgery.

OWCP also received a copy of a November 16, 2004 prescription from Dr. Stahl for an “adjustable bed – Flex-a-Bed or similar,” including handwritten notations providing the vendor information and price estimate, which totaled \$3,317.80.

By decision dated May 20, 2019, OWCP denied appellant’s request for a dual king Flex-A-Bed and power chair lift. It found that the evidence of record was deemed insufficient to establish that those items were medically necessary “because the items are not integral to the care of you with regard to your work injury, but more of a convenience.”

By letter dated May 29, 2019, OWCP requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review. A telephonic hearing was held on October 4, 2019. Appellant testified that he was only seeking replacement mattresses for his dual king Flex-A-Bed and a chair lift, which would assist him in getting up. He clarified that he was not seeking a new bed, just two twin mattresses to go on his existing platform base.

OWCP received additional medical evidence. In progress reports dated April 16 and July 17, 2019, Dr. Mattei continued to assess of lumbosacral spondylosis with progressing stenosis, which he opined was secondary to the March 3, 1998 work injury. He also opined that appellant was totally disabled from work secondary to his back injury. In an April 16, 2019 progress report, Dr. Mattei advised that “we are currently trying to get [appellant] a new electric bed, which is medically necessary now as it was in early 2000s when it was originally prescribed.” He noted that appellant had positive Kemp sign bilaterally, positive Laseque’s sign bilaterally, depressed bilateral Achilles reflexes, and decreased range of motion with lumbosacral paraspinal spasm and gluteal spasm.

In a July 17, 2019 progress report, Dr. Mattei noted that appellant “has an electronic bed, which was prescribed back in early year 2000 for him, which was and still is medically necessary for him, so, hopefully, we will be able to get that covered again.” He indicated that appellant was on pain medication, that appellant had trouble getting up from a sitting position secondary to pain and weakness in his legs, and that he cannot walk for any prolonged distance without having to sit down and rest secondary to the pain.

In a November 13, 2019 report, Dr. Mattei noted the history of appellant’s March 1998 employment injury and that appellant was not being followed by a specialist for his back. He indicated that appellant has a concomitant condition of diabetes, which was diagnosed in 1990 and for which he developed neuropathy in his feet before the March 1998 work-related injury. Dr. Mattei noted, and observed, that appellant had moderate difficulty getting up from a standard chair with arm rests and relied on heavy use of his arms for the purpose of pushing himself up off the chair. In this regard, he noted that appellant had been requesting a lift chair as he found it

difficult to use his chairs at home. Dr. Mattei also reported that, with prolonged sitting, appellant's legs become numb.

Dr. Mattei indicated that another important matter was appellant's bed mattress. He noted that appellant's mattress had been purchased in about the year 2000 and that it was worn out and lacked adequate support. Dr. Mattei noted that appellant reported cramps in his legs, at times when laying down from being in a position too long and that he had to change position. Appellant felt that this was in part due to the poor support of the mattress. Dr. Mattei reported objective findings including that appellant's gait was slow and that he was able to get up on the table unassisted. He noted that the strength of appellant's left leg was slightly weaker than the right, with a strength scale of 3-4/5. Dr. Mattei indicated that he was unable to elicit any ankle or knee jerks in either leg and that appellant had 2/5 strength bilaterally in lifting his thighs off the table when sitting. Examination of the foot failed to reveal any calluses or skin breakdown and appellant was unable to detect sharp sensation in either foot. Dr. Mattei assessed lumbar spondylosis with previous history of disc rupture, neuropathy in appellant's legs at least in part due to diabetes and the injury to appellant's back.

By decision dated December 13, 2019, OWCP's hearing representative affirmed the May 20, 2019 decision. The hearing representative noted that, while appellant sought replacement of his dual king Flex-A-Bed mattress, the prescriptions issued by Dr. Mattei were for a split king (i8 360) smart bed, two mattress pads, two remote controls, and two pillows and a power lift chair. The hearing representative found that the weight of the medical evidence continued to rest with the March 25, 2019 opinion of OWCP's DMA and established that the requested Flex-A-Bed with accessories and the chair lift were not medically necessary as a result of appellant's accepted employment injuries.³

LEGAL PRECEDENT

Section 8103(a) of FECA⁴ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree, or the period of disability, or aid in lessening the amount of monthly compensation.⁵ While OWCP is obligated to pay for treatment of employment-related conditions, the employee

³ The hearing representative advised that, should appellant seek a new mattress for the previously purchased Dual King Flex-A-Bed, his physician should prepare a request for explaining the basis for such request.

⁴ *Supra* note 1.

⁵ 5 U.S.C. § 8103; *see N.G.*, Docket No. 18-1340 (issued March 6, 2019); *G.A.*, Docket No. 18-0872 (issued October 5, 2018); *see Thomas W. Stevens*, 50 ECAB 288 (1999).

has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁶

Section 10.310(a) of OWCP's implementing regulations provide that an employee is entitled to receive all medical services, appliances, or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.⁷

In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority is that of reasonableness.⁸ OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible, in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.⁹ In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.¹⁰

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹¹

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request to purchase a smart bed and power lift chair.

On October 16, 2018 Dr. Mattei, appellant's treating physician, made his initial request that OWCP authorize a smart bed, two mattress pads, two remote controls, two pillows, and a power lift chair to treat appellant's accepted back condition of aggravation of lumbar degenerative disc disease. Although he opined that the mattress and power lift chair were necessary to treat appellant's accepted lumbar condition, he failed to provide a rationalized medical opinion

⁶ See *D.K.*, Docket No. 20-0002 (issued August 25, 2020); *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *Debra S. King*, 44 ECAB 203, 209 (1992).

⁷ 20 C.F.R. § 10.310(a); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.d(5) (October 1995), *id.* at Part 2 -- Claims, *Durable Medical Equipment*, Chapter 2.810.17.h (June 2014); *J.M.*, Docket No. 20-0457 (issued July 16, 2020); *D.W.*, Docket No. 19-0402 (issued November 13, 2019).

⁸ *D.K.*, *supra* note 6; *M.B.*, Docket No. 17-1679 (issued February 8, 2018); *see D.K.*, 59 ECAB 141 (2007).

⁹ See *D.K.*, *supra* note 6; *A.W.*, Docket No. 16-1812 (issued March 15, 2017).

¹⁰ *M.G.*, Docket No. 18-0099 (issued April 26, 2018); *see Debra S. King*, *supra* note 6.

¹¹ *M.G.*, *id.*; *see Minnie B. Lewis*, 53 ECAB 606 (2002).

explaining why the requested equipment was medically warranted.¹² Dr. Mattei merely noted that appellant was previously prescribed the bed 14 years prior and that replacement was now due.

Dr. Ugokwe, a Board-certified neurosurgeon serving as the DMA, reviewed the medical record and a SOAF on March 25, 2019 and determined that the recommended “mattress and lift chair” as prescribed by Dr. Mattei were not causally related to the accepted employment injuries and that the purchase of such were not medically necessary. The DMA opined that those items cannot be directly or causally linked to appellant’s original work injury and were not medically necessary as they were not integral to appellant’s care with regards to his work injury. Rather, they were more items of convenience and, in order for it to be medically necessary, it could not be strictly for the convenience of appellant.

In his subsequent reports of April 16 and July 17, 2019, Dr. Mattei indicated that a new electric bed was medically necessary, just as it was when it was originally prescribed in the early 2000s. He noted, in his July 17, 2019 progress report, that appellant was on pain medications, that appellant had trouble getting up from a sitting position secondary to pain and weakness in his legs, and that he could not walk for any prolonged distance without having to sit down and rest secondary to the pain. In his November 13, 2019 report, Dr. Mattei indicated that appellant’s mattress had been purchased in approximately the year 2000, and that it was worn and lacked adequate support. He reported appellant’s symptoms of leg cramps in his legs while lying down or being in a position too long and that appellant felt that this was in part due to the poor support of the mattress. However, Dr. Mattei did not provide a rationalized opinion explaining how or why the requested smart bed and accessories would cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation.¹³

Regarding appellant’s request for a power lift chair, in his November 13, 2019 report, Dr. Mattei noted that appellant had moderate difficulty getting up from a standard chair with arm rests and relied on heavy use of appellant’s arms for the purpose of pushing himself up off the chair. In this regard, he noted that appellant had been requesting a lift chair, as with prolonged sitting, appellant’s legs became numb. The Board notes that, while Dr. Mattei related that appellant had a preexisting condition of diabetes, which caused neuropathy in appellant’s feet, he did not address, with medical rationale, whether this preexisting, nonwork-related condition caused the numbness in appellant’s legs, or whether appellant’s accepted lumbosacral condition was the cause of the numbness, and subsequent inability to rise from a chair. As previously noted, a medical opinion is of limited probative value if it does not contain sufficient medical rationale in support of the physician’s opinion.¹⁴

OWCP has administrative discretion in choosing the means to achieve the goal of recovery from a work-related injury and the only limitation on its authority is that of reasonableness.¹⁵ As

¹² See *D.K.*, *supra* note 6.

¹³ *Supra* note 10.

¹⁴ *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹⁵ See *supra* note 9.

OWCP's DMA opined that the requested medical equipment was not medically necessary and provided an explanation of his opinion, and the evidence submitted by appellant is insufficient to overcome the weight accorded to the DMA, the Board finds that OWCP has not abused its discretion in denying appellant's request for authorization for the requested power lift chair and smart bed/accessories.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

The Board further finds that the case is not in posture for decision with regard to appellant's request for replacement mattresses for his Flex-A-Bed.

Appellant testified that he was only seeking new mattresses for his current Flex-A-Bed and a chair lift, which would assist him in getting up. He clarified that he was not seeking a new bed, just two twin mattresses to go on his existing platform base.

In a July 17, 2019 progress report, Dr. Mattei noted that appellant "has an electronic bed, which was prescribed back in early year 2000 for him, which was and still is medically necessary for him, so, hopefully, we will be able to get that covered again." He indicated that appellant was on pain medication, that appellant had trouble getting up from a sitting position secondary to pain and weakness in his legs, and that he cannot walk for any prolonged distance without having to sit down and rest secondary to the pain.

In a November 13, 2019 report, Dr. Mattei noted that appellant's mattress had been purchased in about the year 2000 and that it was worn out and lacked adequate support. He further noted that appellant reported cramps in his legs at times when laying down from being in a position too long and that he had to change position. Appellant felt that this was in part due to the poor support of the mattress.

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹⁶ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.¹⁷ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹⁸

In its December 13, 2019 decision, OWCP failed to analyze the need for replacement mattresses for the Flex-A-Bed.¹⁹ OWCP did not address the arguments made by appellant during the hearing, and provided no discussion relative to the new medical evidence submitted by

¹⁶ 5 U.S.C. § 8124(a).

¹⁷ 20 C.F.R. § 10.126.

¹⁸ *Supra* note 7 at Chapter 2.1400.5 (February 2013).

¹⁹ *See Order Remanding Case, J.K.*, Docket No. 20-0556 (issued August 13, 2020).

appellant.²⁰ The Board will therefore set aside OWCP's December 13, 2019 decision in part and remand the case for a *de novo* decision on appellant's request for authorization of replacement mattresses for his existing Flex-A-Bed, which describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting request.²¹

CONCLUSION

The Board finds that OWCP has not abused its discretion in denying appellant's request to purchase a smart bed and power lift chair. The Board further finds that the case is not in posture for decision with regard to appellant's request for replacement mattresses for his Flex-A-Bed.

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 19, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁰ See *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *R.C.*, Docket No. 16-0563 (issued May 4, 2016).

²¹ See *Order Remanding Case, C.D.*, Docket No. 20-0450 (issued August 13, 2020).